IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No.

NORMA GRACE CONSTANTINEAU, Appellee

vs

JAMES W. GRAGER, CHIEF OF POLICE OF HARTFORD, WISCONSIN, Defendant
STATE OF WISCONSIN, Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

MOTION TO DISMISS OR AFFIRM

The appellee moves the Court to dismiss the appeal herein or in the alternative, to affirm the judgment of the three Judge United States District Court on the ground that it is manifest that the questions on which the decision of the cause depends are so insubstantial as not to need further argument.

ARGUMENT

THERE IS NO SUBSTANTIAL FEDERAL QUESTION.

A mere examination of questions 2 and 3 presented by appellant indicates the same are mere questions of practise and procedure and pose no federal substantive questions whatsoever.

With reference to question one, presented by the appellant the statutes in question were never the subject of litigation on the appellate level in Wisconsin, and in the few other jurisdictions where such laws exist they never have been questioned as to their validity. Furthermore, in Delaware, Florida, Maryland, Nevada, Rhode Island, Connecticutt, Vermont and Wyoming where similar statutes exist, no appellate court ever considered a case involving any aspect of these laws, much less their alleged validity. In two of the states which have such statutes, as cited by Appellant, New Hampshire and South Dakota, there have been only one case in each such jurisdiction dealing with these laws, and they have not touched on their invalidity. State v. Small (1955), 99 N.H. 349, 111 A 2d 201; State v. Horner, (1915), 35 S.D. 612, 153 NW 766. The statutes of New Jersey and North Carolina, cited by appellant are not in point as no question of procedural due process in the posting of notices is involved. Only in Minnesota of all the states which have such statutes, has there been any litigation involving these laws, the most recent of which is State v. Provencher, (1915), 129 Minn. 409, 152 NW 775.

No substantial federal question exists that would require the jurisdiction of the United States Supreme Court to be noted:

> "The federal statutes are not a measure of broad social policy to be construed with great liberality but are enactments technical in the strict sense of the term and are to be applied as such, being given a strict construction to protect the appellate docket of the Supreme Court. They are intended by congress as a procedural protection against an unprovident state wide doom by a federal court of a state's legislative policy and their purpose is to minimize, in an important class of cases, the delay incident to a review of a decress granting or denying an injunction.
>
> The statutes apply only where there is a substantial claim of invalidity under the Federal Constitution and where an application for an injunction for the purposes contemplated by the statute is made and pressed." (Emphasis added). C.J.S. Federal Courts, Sec. 220, pp. 686-7.

See also Ex Parte Bruder, 271 U.S. 461, 465, 46 S. Ct. 557, 70 L. ed. 1036; Brucker v. Fischer, (C.C.A. Mich.), 49 F.2d 759; Stratton v. St. Louis S.W. Ry Co. (Ill.), 51 S. Ct. 8, 272 U.S. 317, 71 L. ed. 273.

It is apparent from an examination of the statutes and from the lack of litigation involving these laws, that they play no significant or substantial part of the state wide legislative policy of Wisconsin concerning liquor.

CONCLUSION

For the above and foregoing reasons it is respectfully prayed that the appeal be dismissed or alternatively, that the decision of the Three Judge Court be affirmed.

Respectfully Submitted,

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